

Federal Defenders OF NEW YORK, INC.

Southern District
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June 17, 2021

VIA ECF

Honorable Vernon S. Broderick
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

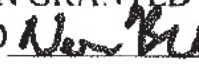
Re: United States v. Saipov,
(S1) 17 Cr. 722 (VSB)

Dear Judge Broderick:

We write with respect to the Court's Order directing the parties to meet and confer about Mr. Saipov's potential request to seek de-authorization of the death penalty. Dkt. No. 385.

As discussed at the June 3, 2021 status conference, President Biden campaigned on a pledge to end the death penalty. See The Biden Plan for Strengthening America's Commitment to Justice (last accessed June 16, 2021) available at: <https://joebiden.com/justice/> (opposing the death penalty); see also Michael Balsamo, "Biden to work to end executions as government sets 3 more," A.P. (Nov. 21, 2020) (Biden's press secretary stated that he "opposes the death penalty now and in the future"), available at: <https://bit.ly/3zy2ueY>; President Biden, Twitter, ("we must eliminate the death penalty") (July 25, 2019), available at: <https://bit.ly/3zDpI3A>.

Following his inauguration, President Biden nominated Merrick Garland for Attorney General, who during his confirmation hearing on February 22, 2021, testified that he "expect[s] that the President will be giving direction" on the federal death-penalty policy, and that it was "not at all unlikely" that the Department of Justice would impose a moratorium on the federal death penalty. See Christina Carrega, "Garland says death penalty cases give him 'pause' and he expects Biden will halt federal prosecutions," CNN (Feb. 22, 2021, 12:42 p.m. ET), available at:

APPLICATION GRANTED
SO ORDERED 
VERNON S. BRODERICK
U.S.D.J. 6/21/2021

The parties are directed to file a status update on the de-authorization request and a progress report on the negotiation of the Rule 15 deposition protocols within 45 days.

<https://cnn.it/3vwMhDE>. President Biden's pledges and Attorney General Garland's statements strongly suggest that DOJ will amend its policies with respect to seeking the death penalty.

Since the status conference on June 3, 2021, the parties have met twice to discuss Mr. Saipov's potential de-authorization request. During those discussions, the government stated that it does not know the status of any death penalty policy changes.

As it stands, the current DOJ Capital Case Protocol sets forth the procedures for the government to de-authorize an already authorized capital case (see Attachment A). Of particular note is the current policy with respect to second or successive de-authorization requests set forth in Title 9-10.160(B) of the DOJ's Manual, which states: "Absent extraordinary circumstances, the Department will not consider successive defense requests to withdraw the notice of intention to seek the death penalty." For this reason, in any capital case, the defense must carefully consider when to seek de-authorization in light of the heavy presumption against future applications.

Accordingly, given the prospect of DOJ policy changes and the current heavy presumption against second or successive defense requests to de-authorize, the defense respectfully requests that the Court accept a status update in 45 days from the parties regarding this issue. In the meantime, the parties will continue to address the other outstanding pre-trial issues, including the safety, feasibility, and logistics of overseas Rule 15 depositions about which the parties will update the Court on or before July 6, 2021.

Respectfully Submitted,

/s/
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cc: Government counsel (via ECF)